

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

GOOGLE INC.	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	
	)	
	)	
JIM HOOD, ATTORNEY GENERAL OF	)	
THE STATE OF MISSISSIPPI, IN HIS	)	
OFFICIAL CAPACITY,	)	
<i>Defendant.</i>	)	
	)	
	)	
	)	

No. 3:14-cv-981-HTW-LRA

**DECLARATION OF MICHAEL H.  
RUBIN IN SUPPORT OF GOOGLE  
INC.’S OPPOSITION TO THE MOTION  
PICTURE ASSOCIATION OF  
AMERICA, INC.’S MOTION TO  
QUASH RULE 45 DEPOSITION  
SUBPOENA**

I, MICHAEL H. RUBIN, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner with the law firm Wilson Sonsini Goodrich & Rosati, attorneys for Plaintiff Google Inc. (“Google”). I submit this declaration in support of Google’s Opposition to the Motion Picture Association of America, Inc. (“MPAA”)’s Motion to Quash Rule 45 Deposition Subpoena. The following facts are true of my personal knowledge and if called and sworn as a witness I could competently testify to them.

2. On January 14, 2016, I emailed Brian Hauck, counsel for the MPAA, to inform him that Google intended to notice the deposition of Steven B. Fabrizio. I told him that fact discovery was set to close on March 18, 2016 and asked if he could provide me with available dates prior to then. I also asked him if he would accept service on Mr. Fabrizio’s behalf, explaining that if so I would send a deposition notice that set the deposition for a mutually agreeable date before the close of discovery.

3. Mr. Hauck responded to me via email on January 19, 2016. He agreed to accept service on behalf of Mr. Fabrizio, but he reserved the right to challenge the notice on non-jurisdictional grounds. I asked him on what grounds the MPAA would challenge the deposition notice, and Mr. Hauck responded that the MPAA was “just reserving our rights at this point, not asserting a challenge.”

4. On January 22, 2016, Mr. Hauck emailed me to discuss dates for the Fabrizio deposition. In his email, he noted that the MPAA “may object to or file a motion to quash a subpoena for the deposition of Mr. Fabrizio.” In response I told him that Google assumed the MPAA would make any motion to quash the deposition in time for the motion to be resolved prior to the noticed deposition date. Mr. Hauck’s only reply was to say that whether the MPAA would file a motion to quash “seem[ed] like bridges we can cross when we get to them” and that “[p]resumably it would depend on the anticipated scope of the deposition, which we can discuss.”

5. Between January 23, 2016 and February 8, 2016, Mr. Hauck and I continued to work on finding a mutually agreeable date for the Fabrizio deposition.

6. Following these discussions, on February 8, 2016 Google and the MPAA mutually agreed that Mr. Fabrizio would be deposed on March 17, 2016 (the day before fact discovery was set to close). The next day, February 9, I sent Mr. Hauck a subpoena, which set the deposition of Steven Fabrizio for March 17, 2016 in Washington, D.C.

7. The following day, February 10, 2016, Mr. Hauck emailed me to ask for a meet-and-confer regarding the scope of the Fabrizio deposition.

8. We met and conferred by phone on February 17, 2016, the first mutually available date. When we spoke, I explained that Google was interested in questioning Mr. Fabrizio about the same general topics covered in its prior document subpoena served on the MPAA: the

MPAA's role in directly and indirectly influencing AG Hood to take action against Google. I also reiterated that Google was not interested in legitimately privileged information. Mr. Hauck nevertheless indicated the MPAA was likely to move for a Protective Order in an effort to block the deposition.

9. I did not hear further from Mr. Hauck until February 23, 2016, when he sent me a letter stating that the MPAA declined to make Mr. Fabrizio available for the March 17 deposition and it planned to file a motion to quash. The letter gave Google until February 25, 2016, to indicate whether it wished to have an additional meet-and-confer.

10. I emailed Mr. Hauck on February 25, 2016 to say that Google took issue with the MPAA's decision not to make Mr. Fabrizio available for the deposition, and that, absent an order from the court, the MPAA's obligations were clear.

11. I heard nothing from Mr. Hauck for eight days. Then, on March 4, 2016 (a Friday), Mr. Hauck emailed me to ask if Google would sign the Certificate of Good Faith required by this Court's local rules.

12. I was travelling that Friday, but I responded to Mr. Hauck the following Monday, March 7, 2016. I told Mr. Hauck that the MPAA's motion to quash was untimely and violated the local rules, but that if the MPAA wished to proceed Google would provide a Certificate of Good Faith that reserved its rights with regard to the rule violations.

13. Mr. Hauck responded via email, indicating that the MPAA would proceed with its motion, that Mr. Fabrizio would not appear on March 17, and that Google should provide the Certificate of Good Faith. Later that day, I provided Mr. Hauck with a signed Certificate of Good Faith, which was filed in conjunction with the MPAA's Motion to Quash.

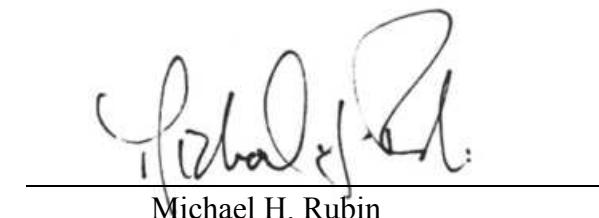
**Authentication of Other Exhibits**

14. Attached hereto as Exhibit A is a true and correct copy of pages 1-2, 32-38, 50-55, 78-81, 100-102, 123-131, and 179-185 of the certified transcript of the deposition of Brian Cohen, the MPAA's former Director of External State Government Relations, held on October 8, 2015, at the offices of Wilson Sonsini Goodrich & Rosati in Washington, D.C.

15. Attached hereto as Exhibit B is a true and correct copy of the transcript of the July 29, 2015 hearing before Judge Schofield of the Southern District of New York on motions to compel and motions to transfer filed by Google against several of the MPAA's member studios.

\* \* \*

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on March 22, 2016.



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Michael H. Rubin

# **EXHIBIT A**

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Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

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GOOGLE, INC. )No.  
Plaintiff ) 3:14-cv-981-HTW-LRA  
vs. )  
JIM HOOD, ATTORNEY )  
GENERAL OF THE STATE OF )  
MISSISSIPPI, IN HIS )  
OFFICIAL CAPACITY )  
Defendant )

---

Videotaped Deposition of Brian Cohen  
Washington, D.C.  
October 8, 2015  
9:06 a.m.

Reported by: Bonnie L. Russo  
Job No. 2146100

Page 2

1 Videotaped Deposition of Brian Cohen held at:

2

3

4

5 Wilson Sonsini Goodrich & Rosati

6 1700 K Street, N.W.

7 Washington, D.C.

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20 Pursuant to Notice, when were present on behalf

21 of the respective parties:

22

23

24

25

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1           A. Who else that was not part of the  
2 studios.

3           Q. No.

4                   I asked you to list anyone on that  
5 call. So I would like to be real clear.

6           A. Got it.

7           Q. Who was on that call?

8           A. I apologize. I thought you had  
9 asked me who from the studios was on that call.

10          Q. Talked about them. Who was on the  
11 call?

12          A. Vans Stevenson, Melissa Patack,  
13 Angela Miele, Sara Walsh. Those in the MPAA  
14 State Government Affairs team. In the studios,  
15 State Government Affairs' representatives, the  
16 people that I had listed and other people whose  
17 names I forgot.

18          Q. Okay. And the -- the people that  
19 you -- the names that you forget are the  
20 individuals from paramount and NBCU?

21          A. Correct.

22          Q. Is the NBCU individual Rick Smotkin?

23          A. He was occasionally on those calls.

24          Q. And he worked for NBCU?

25          A. He worked for Comcast.

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1 Q. But he was on those calls for NBCU?

2 A. Yes.

3 Q. Do you know who else would have been  
4 on those calls? Does that jog your memory, at  
5 all, for -- for NBCU?

6 A. For the weekly State Government  
7 Affairs calls?

8 Q. Sure.

9 A. No.

10 Q. Were there any other weekly calls  
11 set up on State Government Affairs or with  
12 he -- with this group of people?

13 A. Weekly calls with State Government  
14 Affairs or this group of people?

15 Q. Yes.

16 Did you have any other standing  
17 calls with this group of people?

18 A. No.

19 Q. With any subset of this group of  
20 people?

21 A. Yes.

22 Q. What were those calls?

23 A. Well, Rick was part of an AG working  
24 group call.

25 Q. Okay. Who was -- who else was part

1 of that group, the AG working group?

2 A. Bill Guidera, so Vans, David Green  
3 from NBC; Troy Dow from Disney. I'm trying to  
4 remember. Tom Galvin, Digital Citizens  
5 Alliance. Patrick Lynch, Mike Moore. Those  
6 are the names that come to mind.

7 Q. Okay. Did you communicate in  
8 writing to the AG working group?

9 A. Yes.

10 Q. Did you communicate in writing over  
11 e-mail to the AG working group?

12 A. Let me rephrase. We as MPAA did.

13 Q. Did you personally, on behalf of the  
14 MPAA, send e-mails to the AG working group?

15 A. I occasionally, on behalf of the  
16 MPAA, yes.

17 Q. What is the difference between the  
18 AG working group and the state -- I'm -- I'm  
19 forgetting the name. The other call?

20 A. State Government Affairs was focused  
21 on legislative issues in the states. The AG  
22 working group was focused on the general issue  
23 of piracy and intellectual property theft.

24 Q. Was Google a main focus of the AG  
25 working group?

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1 A. Define "main focus"?

2 Q. Was Google a focus of the AG working  
3 group?

4 A. Yes.

5 Q. What other companies were a focus of  
6 the AG working group?

7 A. Any companies in the search engine  
8 universe.

9 Q. Any company in the search engine  
10 universe. Please list them, that you focused  
11 on in those calls.

12 A. Define "focus." I mean...

13 Q. I'm not trying to play a game. I  
14 mean, I'm trying --

15 A. Yeah.

16 Q. -- to figure out what you talked  
17 about on those calls. You tell me.

18 A. We talked about strategies to combat  
19 intellectual property theft that related to  
20 search engines, including Google.

21 Q. The name of the call was the AG  
22 working group, right?

23 A. Yes.

24 Q. So you weren't talking about  
25 strategies at large, you were talking about

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1 some sort of strategy that involved Attorneys'  
2 General, right?

3 MR. ROMMEL: Objection. Misstates  
4 evidence.

5 THE WITNESS: Can you repeat the  
6 question?

7 BY MR. RUBIN:

8 Q. Sure.

9 You weren't talking about strategies  
10 written large to combat issues. You were  
11 talking about strategies involving Attorneys  
12 General; isn't that right?

13 MR. ROMMEL: Objection.

14 THE WITNESS: No. No, that's not  
15 right.

16 BY MR. RUBIN:

17 Q. Then, please describe to me the  
18 strategies that were discussed on those calls.

19 MR. HANDZO: And let me just  
20 interject because this has a potential to get  
21 into legal strategies and legal advice, so I  
22 don't have any problem with your answering with  
23 respect to general business strategies. To the  
24 extent that there was legal advice on the  
25 phone -- on these calls, I would object if that

1 invades the MPAA provision.

2 MR. RUBIN: There -- as described to  
3 me, there is no attorney-client privileged  
4 relationship listed on that call, as that would  
5 be help by the MPAA.

6 MR. HANDZO: Well, I don't agree  
7 with your characterization, but my point to the  
8 witness is if there are legal strategies  
9 involved, whether they were coming from lawyers  
10 directly or whether they were being repeated by  
11 people on the call to talk to the lawyers, I  
12 would object to any discussion of legal  
13 strategy as opposed to business strategy.

14 THE WITNESS: And you -- you did jog  
15 my memory. Ben Sheffner was also on those  
16 calls.

17 BY MR. RUBIN:

18 Q. Okay. What strategies were  
19 discussed on those calls?

20 MR. HANDZO: And same objection.

21 THE WITNESS: There were different  
22 strategies discussed generally to compel  
23 companies, such as Google, to change behavior,  
24 to prevent the theft of intellectual property.  
25 Some of those strategies entailed legislative,

1           some of them were legal, as you heard, some of  
2           them were simply ways to compel stakeholders to  
3           come to the table to have discussions about  
4           voluntary actions.

5           Q.       Did all of the strategies discussed  
6           on those calls involve, in some way, attorneys  
7           general?

8           A.       No.

9           Q.       So the AG working group meandered  
10          from its title?

11          A.       Yes.

12          Q.       What else -- what, beyond the use of  
13          attorneys general, were considered as  
14          strategies to compel search engines to change  
15          their behavior?

16          A.       Can you repeat the question?

17          Q.       What else, beyond the use of  
18          attorneys general, were considered as  
19          strategies to compel search engines to change  
20          their behavior?

21          A.       Legislative.

22          Q.       What sort of legislative strategies?

23          A.       Strategies not too dissimilar from  
24          the strategies that were tried previously.

25          Q.       What strategies were tried

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1           Q.     So, again, your title there was  
2         director, External State Government Relations;  
3         is that right?

4           A.     Yes.

5           Q.     You were a lobbyist; isn't that  
6         right?

7           A.     No.

8           Q.     No, you weren't lobbying?

9           A.     No.

10          Q.     I would like to introduce  
11         Plaintiff's Exhibit --

12           MR. RUBIN: Can we go off the record  
13         for one second?

14           THE VIDEOGRAPHER: Off the record at  
15         9:48.

16           (Pause.)

17           THE VIDEOGRAPHER: On the record at  
18         9:49.

19           MR. DAVIS: As a housekeeping  
20         matter, this is Mike Davis, Mr. Cohen's  
21         attorney. I am e-mailing to Google's counsel  
22         the common interest agreement between Mr. Cohen  
23         and the MPAA.

24           MR. ROMMEL: Can you copy me on  
25         that, as well?

1 MR. DAVIS: Sure.

2 MR. RUBIN: I would like to  
3 introduce Plaintiff's Exhibit 1.

4 (Deposition Exhibit No. 1 was marked  
5 for identification.)

6 BY MR. RUBIN:

7 Q. Mr. Cohen, what I just handed you is  
8 a copy of Mississippi Code, Title 5, Chapter 8,  
9 titled "Lobbying Reform Act of 1994.

10 Do you see that?

11 A. Yes.

12 Q. If I could call your attention to --  
13 on the printout, it's Page 5 of 8, definition  
14 K, lobbying.

15 A. Okay.

16 Q. Could you read K, the first sentence  
17 under K?

18 A. KI?

19 Q. Yes, lobbying -- it says, "Lobbying  
20 means."

21 A. "Lobbying means influencing or  
22 attempting to influence legislative or  
23 executive action through oral or written  
24 communication."

25 Q. Does that not describe what -- part

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1 of what you did in your job at the MPAA?

2 MR. ROMMEL: Objection.

3 Argumentative.

4 MR. DAVIS: Objection. Form.

5 MR. ROMMEL: Calls for a legal  
6 conclusion, as well.

7 BY MR. RUBIN:

8 Q. You can answer the question.

9 Mr. Cohen?

10 A. I'm sorry. Was I waiting?

11 Q. You can answer the question.

12 No. You -- your -- today, I --

13 I'm -- I suspect you're going to hear quite a  
14 number of objections. As we talked about at  
15 the beginning, you can answer the question.

16 Only if one of your lawyers instruct you not to  
17 answer should you not answer the question. So,  
18 here, you should answer the question.

19 A. Got you.

20 Q. And I'll restate the question now --

21 A. Okay.

22 Q. -- because there's been a little  
23 passage of time.

24 A. Okay.

25 Q. K says, "Lobbying means influencing

1 or attempting to influence legislative or  
2 executive action through oral or written  
3 communication." It goes on -- it describes  
4 some other things.

5 But that first definition, that  
6 describes, at least in part, what you did as a  
7 part of your job at the MPAA; isn't that right?

8 MR. DAVIS: Objection. Form and  
9 foundation.

10 MR. ROMMEL: Argumentative. Calls  
11 for legal conclusion.

12 THE WITNESS: Part of my job. I  
13 think part -- part of the MPAA's job was to  
14 service the studios and believed that they were  
15 victims of crime, and so part of that job was  
16 to work with law enforcement and others to  
17 educate and train and hope that they would take  
18 action. So if you equate that with that  
19 definition, that was part of what MPAA did, but  
20 it was under the auspices of being a victim of  
21 crime.

22 BY MR. RUBIN:

23 Q. I'm asking for a "yes" or "no"  
24 question [sic], Mr. Cohen. Rather, I'm asking  
25 a yes-or-no question that calls for a yes-or-no

1 answer.

2 MR. ROMMEL: Objection.

3 Argumentative.

4 MR. DAVIS: Same objection. Form.

5 Foundation.

6 MR. RUBIN: Counsel, I'm not asking  
7 an argumentative question. If you could keep  
8 your objections to a flat objection, I'd  
9 appreciate it.

10 MR. ROMMEL: I'm allowed to make any  
11 evidentiary objection I -- I'm entitled to  
12 make, so I'm going to make them.

13 BY MR. RUBIN:

14 Q. Mr. Cohen, I'm simply asking for you  
15 to read those words and -- and -- and tell me  
16 if that was within the compass of what you did.

17 A. When you say --

18 MR. DAVIS: Objection. Form.

19 Foundation.

20 THE WITNESS: Would executive action  
21 mean calling a meeting to discuss issues of  
22 concern?

23 BY MR. RUBIN:

24 Q. Sure, if that's what you understand  
25 it to mean.

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1           A.     Then, yes. That was something the  
2       MPAA did.

3           Q.     Were you -- are you a registered  
4       lobbyist, or were you a registered lobbyist in  
5       Mississippi?

6           A.     No.

7           Q.     Did anyone else at the MPAA  
8       register -- register as a lobbyist in  
9       Mississippi?

10           MR. ROMMEL: Objection.

11           THE WITNESS: I don't know.

12           BY MR. RUBIN:

13           Q.     Have you ever registered as a  
14       lobbyist anywhere?

15           A.     No.

16           Q.     Were there any discussions at the  
17       MPAA about registering as a lobbyist?

18           MR. HANDZO: Again, objection to the  
19       extent that it might reveal discussions with  
20       attorneys on that issue. If there are  
21       non-legal discussions, you can talk about it.  
22       If those were legal discussions, then don't.

23           THE WITNESS: I don't remember any  
24       discussions.

25           BY MR. RUBIN:

1           A. General overarching strategy with  
2 regards to Google.

3           Q. Whose strategy?

4           A. The MPAA's.

5           Q. Who developed the strategy?

6           A. I don't know.

7           Q. Who coined the term "Project  
8 Goliath"?

9           A. I don't know.

10          Q. Who would know?

11          A. I don't know.

12          Q. Who is the expert in Project  
13 Goliath?

14          A. I don't know.

15          Q. Whose baby was Project Goliath?

16           MR. ROMMEL: Objection.

17           MR. DAVIS: Objection to form.

18           THE WITNESS: I don't know.

19           BY MR. RUBIN:

20          Q. Who would know?

21          A. I don't know.

22           MR. ROMMEL: Objection. Calls for  
23 speculation.

24           BY MR. RUBIN:

25          Q. Who's in charge of the MPAA?

1 A. Chris Dodd.

2 Q. And all decisions of consequence are  
3 run by Chris Dodd?

4 MR. DAVIS: Objection.

5 MR. ROMMEL: Objection. Lacks  
6 foundation.

7 THE WITNESS: I don't know.

8 BY MR. RUBIN:

9 Q. When did you first hear the term  
10 "Project Goliath"?

11 A. It was towards the end of my tenure  
12 there. I don't recall exactly. You know, I --  
13 I finished around April 2014. So it was  
14 towards the end, but I can't tell you the  
15 specific date.

16 Q. Was the term "Project Goliath" ever  
17 used on the AG working group calls?

18 A. I don't know.

19 Q. Did you ever hear anyone else use  
20 the term?

21 A. Yes.

22 Q. Who did you hear it from?

23 A. General counsel at MPAA, Steve  
24 Fabrizio.

25 Q. In what context?

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1           A. Again, this overarching theme of --  
2 with regards to Google.

3           Q. What did he tell you?

4           MR. HANDZO: Objection. Mr.  
5 Fabrizio, obviously, is a lawyer, so to the  
6 extent that Mr. Fabrizio is giving -- dealing  
7 legal strategy or legal advice, I would object  
8 to the witness answering that question.

9           THE WITNESS: I don't remember.

10          BY MR. RUBIN:

11          Q. You don't remember what he said?

12          A. No.

13          MR. RUBIN: I want to be clear with  
14 respect to the objection just made by the MPAA  
15 that it's not clear, at all, that the --  
16 anything with respect to Project Goliath is  
17 privileged. We don't believe that it is. It's  
18 a business strategy. We don't believe that  
19 there's any legal advice involved, whatsoever.

20          MR. HANDZO: You're entitled to your  
21 opinion. Obviously, I have a different one.

22          MR. RUBIN: That seems to be the  
23 case.

24          BY MR. RUBIN:

25          Q. Who else did you hear use the term

1 "Project Goliath"?

2 A. Vans, Michael O'Leary.

3 Q. Did Project Goliath involve others  
4 outside the MPAA?

5 A. I don't know.

6 Q. Did it involve the member studios?

7 A. I don't know.

8 Q. Did it involve efforts to influence  
9 State's attorneys general?

10 A. It did involve efforts to educate  
11 State's attorneys general.

12 Q. And push them to take action?

13 A. Yes.

14 Q. So not just to educate State's  
15 attorneys general?

16 MR. DAVIS: Objection. Form.  
17 Foundation.

18 THE WITNESS: To educate them to  
19 take action.

20 BY MR. RUBIN:

21 Q. What sort of action?

22 A. To compel Google to come to the  
23 table to have discussions about changing its  
24 practices.

25 Q. Changing what practices,

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1 A. No.

2 Q. Who drafted the presentation that  
3 you gave?

4 A. It was sort of a group effort from  
5 all those involved in this meeting.

6 Q. Was that done electronically?

7 A. I don't remember.

8 Q. You don't remember if you  
9 collectively drafted a presentation  
10 electronically or not?

11 A. It may have been verbally, in -- in  
12 person. It may have been electronically. I  
13 can't say with certainty. I don't recall.

14 Q. What was the purpose of the meeting  
15 from the MPAA's perspective?

16 A. I was not part of leadership or  
17 policy discussions from the MPAA. I was  
18 implementing, so I don't know.

19 Q. What did you understand it to be?

20 A. I understood the purpose to be  
21 continuing education to work with law  
22 enforcement as victims of crime to demonstrate  
23 the dangerous behavior to our industry but to  
24 many industries.

25 Q. Did you seek to incentivize Attorney

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1 General Hood to take action against Google?

2 MR. ROMMEL: Objection.

3 MR. DAVIS: Objection. Form.

4 Foundation.

5 MR. ROMMEL: Argumentative.

6 Speculation. Calls for a legal conclusion.

7 THE WITNESS: No.

8 BY MR. RUBIN:

9 Q. The MPAA did not have as a goal of  
10 that meeting to seek to have Attorney General  
11 Hood take any action with respect to Google,  
12 whatsoever?

13 A. Well, it's a separate question.

14 Just --

15 Q. I'm asking you a yes-or-no question.

16 A. Can you repeat the question?

17 Q. Did the MPAA have as a goal of that  
18 meeting to have Attorney General Hood take any  
19 action with respect to Google, whatsoever?

20 A. Yes, MPAA would have wanted Google  
21 to come to the table to change its behavior.  
22 We encouraged General Hood and others to  
23 continue these important conversations with  
24 Google.

25 Q. What means did you seek to have

1 Attorney General Hood employ to have Google  
2 come to the table?

3 A. I think a variety of different means  
4 were discussed. I think the core goal was  
5 simply through the course of these  
6 conversations and platforms, such as the NAAG  
7 IP Committee, that they would come to the table  
8 and have a good dialogue. I think it was  
9 evident if that was not going to work other  
10 means would -- would be necessary. Some of  
11 those are legal, which I can't talk about  
12 because of the privilege. Some of them were to  
13 continue to have this conversation through  
14 other platforms, including the public purview.

15 Q. Which means did you discuss at the  
16 meeting with Attorney General Hood to have  
17 Google come to the table?

18 A. I think all means were discussed.

19 Q. Which specific means were discussed?

20 A. Continued conversations through AGs  
21 and the NAAG IP Committee, written letters to  
22 follow up to Google regarding these questions,  
23 continued elevation of the issue in the public  
24 purview to hope that they would come to the  
25 table, and then if none of those worked, legal

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1 too.

2 A. Okay.

3 Q. You sent the document. Can you tell  
4 me --

5 A. Right.

6 Q. -- what it refers to?

7 A. I don't -- again, I don't recall the  
8 actual instance when I was sending the  
9 document. I'm sure that I did send the e-mail.  
10 It's right here.

11 Q. Uh-huh.

12 A. I -- it looks like I did attach  
13 this. That would appear to be a date; but,  
14 again, I can't say with certainty that that  
15 refers to a date.

16 Q. Okay. I'm going to ask you -- ask  
17 you a specific question. On what day did you  
18 send this e-mail?

19 A. It looks like Thursday, January  
20 17th, 2013.

21 Q. What's the date format in the  
22 subject of the attachment?

23 A. Day of the week, month of the year,  
24 the actual day, the year and the time.

25 Q. In the subject of the attachment,

1 what's the format? What's the number?

2 A. In the subject -- it's 1-17-13.

3 Q. And what do you understand that to  
4 mean?

5 A. Again, I would presume that that's  
6 referring to the date.

7 Q. Okay. Would you -- do you  
8 understand this to mean that this was the final  
9 version of this document as of this date that  
10 you sent this e-mail?

11 A. Yes.

12 Q. Were there draft versions of this  
13 document that existed prior to this version?

14 A. I don't remember. I don't remember  
15 if there were drafts.

16 Q. Do you have a habit of labeling  
17 documents "final" when there aren't drafts  
18 preceding them?

19 A. No.

20 Q. You were sending this document for  
21 what purpose?

22 A. This was follow up on behalf of the  
23 MPAA. So, again, I was a contact, a messenger,  
24 a liaison for the MPAA, and it appears the RIAA  
25 and IACC to thank and provide recommendations

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1 to the NAAG IP Committee chaired by General  
2 Hood for suggestive follow-up actions that  
3 would help propel and continue the conversation  
4 from the Florida meeting.

5 Q. You were suggesting actions that  
6 Attorney General Hood could take as chair of  
7 the NAAG IP Committee at the next NAAG meeting;  
8 is that right?

9 MR. ROMMEL: Objection.

10 THE WITNESS: Yes.

11 Actions that the committee could  
12 take.

13 BY MR. RUBIN:

14 Q. Actions that the MPAA, the RIAA, and  
15 IACC were interested in having Attorney General  
16 Hood pursue; is that right?

17 MR. ROMMEL: Objection. Misstates  
18 testimony.

19 THE WITNESS: The MPAA and it  
20 appears the RIAA and IACC were interested in  
21 only speaking, from what I would surmise from  
22 the MPAA, as a victim of crime with the  
23 committee taking actions that would help propel  
24 and continue the conversation.

25 BY MR. RUBIN:

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1 Q. You were interested in having  
2 Attorney General Hood as the chair of the IP  
3 Committee pursue the action items you attached  
4 to this e-mail; isn't that right?

5 MR. ROMMEL: Objection. Misstates  
6 testimony.

7 THE WITNESS: I was not personally  
8 interested. The MPAA provided recommendations  
9 for General Hood who chaired the committee for  
10 follow-up actions regarding that NAAG IP  
11 Committee.

12 BY MR. RUBIN:

13 Q. And it hoped that -- and the MPAA  
14 hoped that Attorney General Hood would follow  
15 those recommendations, didn't it?

16 MR. ROMMEL: Objection. Lacks  
17 foundation. Speculation.

18 THE WITNESS: Yeah. Yes.

19 BY MR. RUBIN:

20 Q. In the -- in the e-mail that you  
21 sent to Meredith Aldridge of Attorney General  
22 Hood's office --

23 A. Uh-huh.

24 Q. -- you start by saying, "We look  
25 forward to seeing you at DAGA in California."

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1                   Do you see that?

2                   A.     I do.

3                   Q.     What is DAGA?

4                   A.     Democratic attorneys general  
5                   Association.

6                   Q.     Could you explain to me what "DAGA  
7                   in California" is a reference to?

8                   A.     There is a conference in California  
9                   for the Democratic attorneys general  
10                  Association.

11                  Q.     When did that take place?

12                  A.     It looks as though from the e-mail  
13                  around February 1, 2013.

14                  Q.     Did you attend that?

15                  A.     Yes.

16                  Q.     Do you recall meeting with Attorney  
17                  General Hood or anyone from his office at the  
18                  DAGA meeting in California?

19                  A.     I don't remember or recall.

20                  Q.     Do you recall working with Senator  
21                  Dodd about what he was going to be addressing?

22                  A.     I recall -- I was not very -- I was  
23                  not really a part of the prep for his -- his  
24                  address at that conference.

25                  Q.     Who was part of Senator Dodd's

1           preparations for his address at the DAGA  
2           meeting on February 1 in California?

3           A.       Vans.

4           Q.       Did you have any communications at  
5           all with Vans about his prep with Sen -- with  
6           Senator Dodd for that presentation?

7           A.       Yes.

8           Q.       What were the -- what were the  
9           substance of those preparations?

10          A.       I think Vans and I, potentially  
11         others, discussed that this was another good  
12         opportunity for Senator Dodd to bring up these  
13         important issues of piracy and intellectual  
14         property theft before an audience of attorneys  
15         general and to recognize some of the leaders in  
16         the room, General Hood being one of them.  
17         There were potentially others, as well. So  
18         those AGs that had -- have been good leaders on  
19         the issue.

20          Q.       Did you discuss Google, in  
21         particular, with Vans as something that Senator  
22         Dodd should raise at that meeting?

23          A.       I don't remember.

24          Q.       You don't recall one way or the  
25         other?

1           A. I don't recall if I specifically  
2       discussed Google with Vans as part of that  
3       speech.

4           Q. Do you recall if Vans told you that  
5       Senator Dodd was considering raising Google in  
6       that speech?

7           A. I don't remember.

8           Q. But you did suggest to Vans that it  
9       would be productive to thank Attorney General  
10      Hood -- rather, productive for Senator Dodd to  
11      thank and commend Attorney General Hood at  
12      that -- in that speech, didn't you?

13          A. I think we discussed it. I don't  
14      recall if I suggested it or if Vans suggested  
15      it.

16          Q. Who came up with the action item  
17      recommendations reflected in the attachment?

18          A. I don't know.

19          Q. Did you help develop them?

20          A. I helped develop them. I don't  
21      think I came up with them. I did not come up  
22      with them.

23          Q. Where did they originate?

24          A. I don't know.

25          Q. You have no idea where they came

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1 from?

2 A. I could guess and have some idea.

3 Q. Okay. Please explain your  
4 understanding of where they came from.

5 A. Probably collaboration amongst Vans,  
6 some of the studios who were interested in  
7 this, other stakeholders such as the RIAA who  
8 had an interest in these issues. There was  
9 generally a group collaboration when it came to  
10 this.

11 Q. Did you -- what input did you  
12 provide into the creation of the NAAG action  
13 item -- pardon me -- the NAAG action item  
14 recommendations?

15 A. I think that I thought sending  
16 follow-up letters to the different sectors of  
17 the committee, the search, the advertising, the  
18 payment processing content was a good way to  
19 ensure that the questions were continued --  
20 that the conversation was continued.

21 Q. And who do you think should draft  
22 those letters?

23 A. I don't recall having an opinion who  
24 should draft. I don't recall drafting.

25 Q. Do you recall having meetings about

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1           the creation of the action item recommendations  
2           reflected in the attachment to Exhibit 4?

3           A.       Yes.

4           Q.       How many meetings do you recall?

5           A.       I don't know.

6           Q.       Do you recall having e-mail  
7           exchanges with respect to the attachments  
8           reflected in Exhibit 4?

9           A.       Yes.

10          Q.       Did you have communications with  
11           Attorney General Hood's office in advance of  
12           the DAGA meeting other than the e-mail that  
13           we're looking at embodied in Exhibit 4?

14          A.       Yes.

15          Q.       Could you describe those  
16           communications?

17          A.       I think there were various e-mails  
18           between me as a messenger for the MPAA and  
19           General Hood's office, I think particularly  
20           Meredith, regarding follow up to that meeting  
21           in Florida.

22          Q.       What particular -- what, in  
23           particular, were you discussing in those  
24           e-mails?

25          A.       Follow-up items.

1 AG voice and that the concerns stem across all  
2 industries, movies, music, pharmaceuticals,  
3 other products that affect consumer safety."

4 So, again, here --

5 Q. You can go on. Please read the next  
6 paragraph.

7 A. "Just trying to ensure not  
8 taking" -- "not taken as an MPAA letter, avoid  
9 the SOPA/PIPA perception, et cetera. Does that  
10 make sense? That was the only concern. Thanks  
11 again."

12 Q. Okay.

13 A. So, again --

14 Q. So please --

15 A. Well, i would like to clarify the  
16 question, and I'm still answering your  
17 question.

18 Q. You're not still answering the  
19 question.

20 A. Okay.

21 Q. You indicated before that -- that --

22 MR. ROMMEL: Please let the witness  
23 answer the question.

24 MR. RUBIN: The question has been  
25 answered.

1                   MR. ROMMEL: You can restate it.

2                   Let the witness answer the question.

3                   MR. RUBIN: The question has been  
4                   answered.

5                   MR. ROMMEL: Objection. Let the  
6                   witness answer the question.

7                   MR. RUBIN: We're not going to have  
8                   speeches being made.

9                   THE WITNESS: I'm not making a  
10                  speech. I just want to clarify when I say,  
11                  "my" --

12                  BY MR. RUBIN:

13                  Q.        Okay.

14                  A.        -- you asked me if -- you said,  
15                  "your personal." My personal concern -- that  
16                  was not my personal concern.

17                  Q.        Whose concern was it?

18                  A.        So...

19                  I think it was a concern of the MPAA  
20                  leadership.

21                  Q.        Okay. Which -- who -- who -- who in  
22                  the MPAA leadership?

23                  A.        I don't know.

24                  Q.        How did you come to understand that  
25                  it was a concern of the MPAA leadership?

1 A. Through my supervisor.

2 Q. Who is your supervisor?

3 A. Vans.

4 Q. He communicated to you that it was  
5 the concern of the MPAA leadership that this  
6 letter not bear the fingerprint of the MPAA; is  
7 that right?

8 MR. ROMMEL: Objection. Misstates  
9 testimony.

10 MR. DAVIS: Objection. Form and  
11 foundation.

12 THE WITNESS: He conveyed to me --  
13 well, there is -- I think there is general  
14 consensus from the AG working group that it was  
15 important that as these issues played out  
16 through this letter that the MPAA concern was  
17 not of intellectual property theft. It was not  
18 the only concern regarding this dangerous  
19 behavior on the Internet. There was other --  
20 there are other dangerous behaviors;  
21 pharmaceuticals and whatnot.

22 So it was conveyed to me through  
23 Vans that the MPAA leadership, and I imagine  
24 all folks that -- all stakeholders that were  
25 interested in these issues did not want this to

1           become just about intellectual property theft.  
2           It was about the greater good of preventing  
3           this dangerous behavior from being accessed  
4           Google.

5                   So what I was doing was clarifying  
6           when I say, "my," I was speaking through the  
7           input that I received from Vans that reflects  
8           those other stakeholders.

9           Q.       That reflects MPAA leadership.  
10              That's what you testified to earlier?

11           A.       Right.

12                   Among other stakeholders, as well;  
13              but, certainly, yes, MPAA leadership.

14           Q.       But -- your e-mail says you want to  
15           be sure that -- and I'm going to quote here,  
16           "You guys" -- "anything you guys added didn't  
17           make the letter seem like it was MPAA driven,"  
18           close quote.

19                   Do you see that?

20           A.       Yes.

21           Q.       That's because the letter emanated  
22           from the MPAA and was sent to Attorney General  
23           Hood's office; isn't that right?

24                   MR. DAVIS: Objection. Form and  
25           foundation.

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1                   MR. ROMMEL: Objection. Calls for  
2 speculation. Misstates testimony. Lack of  
3 foundation.

4                   THE WITNESS: I know the letter -- I  
5 know the letter had input from various people;  
6 the MPAA, General Hood's office, and  
7 potentially others that I'm not aware of.

8                   BY MR. RUBIN:

9                   Q. It was a collective effort?

10                  MR. ROMMEL: Objection. Misstates  
11 testimony.

12                  BY MR. RUBIN:

13                  Q. Is that right?

14                  MR. DAVIS: Same objection.

15                  THE WITNESS: I don't know the final  
16 draft of the letter. I don't know who penned  
17 the final draft of the letter. I know that  
18 MPAA provided input to the letter.

19                  BY MR. RUBIN:

20                  Q. Would it be correct to say that you  
21 worked with Attorney General Hood's office on  
22 this letter?

23                  A. Yes.

24                  Q. Why do you think the MPAA wanted to  
25 make sure that it didn't seem MPAA driven?

1 A. I don't know.

2 Q. You were just told that that was a  
3 concern of -- of MPAA leadership?

4 A. I didn't develop policy or strategy.  
5 I implemented, and those were the sentiments  
6 that were conveyed to me.

7 Q. Policy and strategy were developed  
8 by Vans Stevenson and those above him at the  
9 MPAA; is that right?

10 A. I don't know who developed them, but  
11 it wasn't me.

12 Q. Who do you understand developed  
13 them?

14 A. I understand that Vans is part of  
15 the leadership team.

16 Q. Who else is on the leadership team?

17 A. I don't know how you define  
18 leadership team. It's certainly the CEO.

19 Q. Who is the CEO?

20 A. Chris Dodd.

21 Q. Who else?

22 A. I would imagine heads of  
23 departments.

24 Q. Did Chris Dodd see the -- see a  
25 draft of that letter?

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1                   MR. ROMMEL: Objection. Calls for  
2 speculation.

3                   THE WITNESS: I don't know.

4                   BY MR. RUBIN:

5                   Q.     Would you expect him to have seen a  
6 draft of that letter?

7                   MR. ROMMEL: Same objection.

8                   MR. DAVIS: Objection. Form and  
9 foundation.

10                  THE WITNESS: I don't know.

11                  BY MR. RUBIN:

12                  Q.     Did you have input into other  
13 letters or give the MPAA signoff on other  
14 letters sent by the Attorney General's Office?

15                  MR. ROMMEL: Objection. Vague.

16                  THE WITNESS: I don't know that  
17 there was ever an MPAA signoff. Did MPAA have  
18 input into other letters sent by General Hood,  
19 yes.

20                  BY MR. RUBIN:

21                  Q.     I would like to introduce  
22 Plaintiff's Exhibit 7.

23                  (Deposition Exhibit No. 7 was marked  
24 for identification.)

25                  MR. DAVIS: What are you thinking

# **EXHIBIT B**

F7t6gooc

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 GOOGLE, INC.,

4 Defendant,

5 v. 15 MC 150 (LGS)

6 TWENTY-FIRST CENTURY FOX, INC.  
7 et al.,

7 Defendants.

8 -----x

9 New York, N.Y.  
10 July 29, 2015  
10:30 a.m.

11 Before:

12 HON. LORNA G. SCHOFIELD,

13 District Judge

14 APPEARANCES

15 WILSON SONSINI GOODRICH & ROSATI  
16 Attorneys for Plaintiff  
16 BY: DAVID H. KRAMER  
17 MICHAEL H. RUBIN

17 JENNER & BLOCK, LLP  
18 Attorneys for Defendants  
19 BY: SCOTT BLOCK WILKENS  
19 DAVID A. HANDZO

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SOUTHERN DISTRICT REPORTERS, P.C.  
(212) 805-0300

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1 (Case called; in open court)

2 THE DEPUTY CLERK: Counsel, please state your name for  
3 the record.

4 MR. RUBIN: Michael Rubin of Wilson Sonsini for  
5 petitioner Google.

6 MR. KRAMER: David Kramer from Wilson Sonsini also for  
7 Google, your Honor.

8 THE COURT: Good morning.

9 MR. HANDZO: Good morning, your Honor. David Handzo  
10 on behalf of respondents Twenty-First Century Fox and NBC  
11 Universal and Viacom.

12 THE COURT: Good morning.

13 MR. WILKENS: Scott Wilkens from Jenner & Block also  
14 on behalf of the respondent.

15 THE COURT: Good morning. First of all my apologies  
16 that we're starting late. I didn't know the last matter was  
17 going to take as long as it took.

18                   We are here in connection with Google, the  
19 petitioner's petition to transfer the motion to compel  
20 compliance from third-party subpoena under Rule 45(f). I have  
21 this matter as you know as the Part I judge. I think that  
22 Judge Ramos had it before me. Judge Abrams briefly had it  
23 after that. It is mine now for the moment. As I hoped was  
24 clear in the order that I issued on July 23rd, I wanted to  
25 revisit Judge Ramos's decision whether or not transfer is

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1 appropriate. So Google, which is the petitioner, has the  
2 burden of proof. I have read -- I will not promise that I have  
3 read all five inches of the material but I think I have read  
4 the material parts, but I would like to hear a summary of your  
5 argument as to why it should be transferred and then I will  
6 hear the other side and then we can go from there.

7 So I am not sure who is speaking on behalf of  
8 petitioner, Mr. Rubin or Mr. Kramer.

9 MR. RUBIN: It will be me, your Honor, Mr. Rubin.

10 I had understood your order to indicate that we should  
11 be presenting new considerations, new arguments and new facts  
12 not presented in prior briefing.

13 THE COURT: You can do both.

14 MR. RUBIN: I would be happy to summarize our previous  
15 argument. That is rather straightforward. The basic issue  
16 here is that the standard under Rule 45 is that where there are  
17 exceptional circumstances, and the advisory committee rules  
18 speak to that, that is where there are circumstances that are  
19 likely to lead to interference with the management of the  
20 underlying litigation. The advisory rules give two examples of  
21 that where issues are pending in multiple districts or where  
22 there are prior orders issued by the district courts that bear  
23 on the issues in whatever is before the district court. Where  
24 that occurs, exceptional circumstances exist. Unless there are  
25 countervailing undue burdens, transfer is appropriate. We

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1 believe we showed that exceptional circumstances exist.

2 THE COURT: Can you update me at all on the facts or  
3 are they still basically the same? The last I heard you had  
4 filed a motion to compel in both Mississippi and in D.C. and  
5 both were pending. Is that still the case?

6 MR. RUBIN: It is essentially the case, but let me  
7 give you a brief update.

8 THE COURT: Okay.

9 MR. RUBIN: It is correct that in Mississippi the  
10 motion to compel is still under submission with Judge Wingate  
11 in the Southern District of Mississippi. He is the judge in  
12 the underlying case against Attorney General Hood.

13 In the District of D.C. there are pending two motions.  
14 They are consolidated motions against three different parties.  
15 That is a motion to compel raising similar issues to the one  
16 before your Honor from the time being anyway and a motion to  
17 transfer those subpoenas to the Southern District of  
18 Mississippi. Both of those are pending. We expect a ruling on  
19 the transfer motion imminently.

20 We had also indicated last time we were before the  
21 Court that we believed there was a possibility we might be  
22 moving to compel against a third party. That is now happening.  
23 We'll be filing that motion within a few days.

24 THE COURT: Where?

25 MR. RUBIN: Northern District of California. That

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1 motion will raise similar issues. Although I will be frank  
2 that they have gone even further in withholding materials.  
3 They have withheld everything, even their communications with  
4 Attorney General Hood. They are another party that worked  
5 alongside all the other parties here and the parties in D.C. in  
6 the anti Google campaign.

7 THE COURT: There is some suggestion by the  
8 respondents that your decision to file these various motions to  
9 compel in different jurisdictions is strategic so that you can  
10 get them all back to Mississippi. So tell me a little bit  
11 about that.

12 MR. RUBIN: I can just flatly say it is not. We have  
13 no choice. We're going where we have to go to find the  
14 evidence. There was some questions, and I believe your Honor  
15 said you had read the transcript from the last hearing, where  
16 Judge Ramos asked me some questions about could we have served  
17 the subpoenas elsewhere? We served the subpoenas where the  
18 entities are located. That brought us to where we are. We  
19 have the three in D.C., we have the three here, and we will now  
20 have one more in the Northern District of California.

21 THE COURT: Tell me about the relationship of these  
22 various entities to the lawsuit.

23 MR. RUBIN: We're learning more. I think it is  
24 actually interesting. If you read our opening motion to  
25 compel, our reply, the fact that I have had to put in an

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1 opening declaration, a supplemental and a second supplemental  
2 and even yet a supplemental evidentiary submission because we  
3 keep learning more. I can tell you what I know today. I can  
4 tell you today that there are three parties in D.C. and to my  
5 surprise counsel for all of them are here. Counsel for the DCA  
6 is sitting in the back. That is the Digital Citizens Alliance.  
7 Counsel for Jenner & Block and the MPAA, both in D.C., are here  
8 because they represent the studios as well.

9 I don't want to retread old ground but a little bit.  
10 Throughout the meet and confer process we have interacted with  
11 quite a number of parties, but what has become clear is that  
12 all of these parties worked together in some way to animate  
13 Attorney General Hood's anti-Google efforts and to inspire  
14 them. There are the three studios here that are at issue here  
15 working in the litigation effectively as a single voice. Their  
16 lobbyist at the Motion Picture Association of America, the  
17 MPAA, and an affiliated organization called the Digital  
18 Citizens Alliance have worked together to provide information  
19 to Attorney General Hood to draft to CIE that was at issue that  
20 prompted the underlying lawsuit, to fundraise for him, to hire  
21 a PR agency for him, to ghost write press release for him and  
22 to do all the other things that we have yet to learn about.  
23 The document we submitted as supplemental evidence -- I think  
24 it is docket entry 40 -- is quite instructive. It lays out a  
25 plan.

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1           THE COURT: I am curious and it has no bearing on my  
2 decision, but is there liability on their part?

3           MR. RUBIN: It's an interesting party. There is no  
4 claim against them.

5           THE COURT: I understand that. They are all  
6 third-party witnesses.

7           MR. RUBIN: I don't know. The documents that we  
8 submitted on the 23rd, docket entry 40, talks about some rather  
9 surprising things -- stock manipulation efforts, efforts to  
10 submit material to the SEC. That is not something we're  
11 pursuing in the Southern District of Mississippi or at this  
12 time. It does raise one's eyebrows I agree.

13          THE COURT: Tell me a little bit about discovery with  
14 petitioner's here. As I understand it there has been some  
15 limited exchange of documents; is that right?

16          MR. RUBIN: Yes. Let me explain that. I was going to  
17 get into that anyway. The discovery with the petitioners here  
18 has been in a word frustrating. I am not going to get into the  
19 materials that they have agreed -- not agreed to produce. They  
20 have agreed to produce a certain set of documents.

21          THE COURT: There has been no actual production yet?

22          MR. RUBIN: There has been an actual production.

23          THE COURT: What form did it take?

24          MR. RUBIN: It took the form of a PDF.

25          THE COURT: They were e-mailed?

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1           MR. RUBIN: I don't know how they were sent to us.  
2 They were e-mailed completely to avoid custodial information.  
3 As we get from supplemental productions from Attorney General  
4 Hood, it became clear to us that the representation to us--

5           THE COURT: I just want to go back to something much  
6 more basic. You're in California. They are producing  
7 documents to you. Lawyers are not running around to  
8 Mississippi to make production to you. They are sending them  
9 electronically somehow; is that right?

10          MR. RUBIN: Absolutely.

11          THE COURT: There is no burden because whether this  
12 production of discovery itself is in Mississippi or California  
13 or whatever it is; is that right?

14          MR. RUBIN: 100 percent. The only time I have seen  
15 them face-to-face has been in court.

16          THE COURT: But if I were to transfer this, the motion  
17 to compel would require someone to show up in Mississippi?

18          MR. RUBIN: Absolutely not.

19          THE COURT: Why is that?

20          MR. RUBIN: Rule 45 actually speaks to this.

21          THE COURT: I know that if the judge is amenable, they  
22 get can appear by phone.

23          MR. RUBIN: Judge Wingate is amenable. In fact more  
24 than one of his hearings have been held by phone in the main  
25 case. There is every reason to believe that he would be open

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1 to it. They indicated they are not interested in that.

2 THE COURT: I understand. That is a strategic  
3 decision people make.

4 MR. RUBIN: Agreed.

5 THE COURT: If you don't mind I am going to ask you to  
6 sit down and I will hear from the petitioners.

7 So tell me why it is hardship for this to be in  
8 Mississippi?

9 MR. HANDZO: Your Honor, it is a burden because as you  
10 point out we're going to be making lots of trips to Mississippi  
11 if this case gets transferred. It is -- we've had multiple  
12 hearings already of course in this case and there will be more  
13 to come if the case stays here.

14 THE COURT: I notice you're from Washington so you are  
15 traveling to come here. It is not as though you are down the  
16 street.

17 MR. HANDZO: Trust me, your Honor, there is a world of  
18 different between getting on the Acela to come to New York and  
19 I do my best work on the Acela. Going to Mississippi is a  
20 different ballgame. It is going to be multiple trips. I think  
21 you probably already have a sense of the litigiousness of this  
22 matter.

23 THE COURT: What I have also heard is that Judge  
24 Wingate will accommodate counsel by having conferences on the  
25 phone if counsel wish to appear that way. I know sometimes

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1       lawyers are not interested in that and they think there is  
2       value to being in court. That is a strategic decision.

3            MR. HANDZO: Your Honor, I don't know whether Judge  
4       Wingate would have accommodate it. Maybe he would. This is  
5       way too important to my clients to be phoning it in. I am one  
6       of those old-school lawyer who likes to be in front of a judge  
7       and see facial expressions. I don't think my clients would be  
8       willing to do this by telephone.

9            If I, may, I want to address the Courts questions but  
10      I want to go back to the question you asked in your order  
11      initially which is what has changed since Judge Ramos's ruling  
12      and the answer is not a lot but some. One of the things that  
13      has changed is we have filings from Google in the District of  
14      Columbia that confirm a lot of the things that I said when I  
15      was last here arguing the motion to transfer and underlining  
16      some of the things that Google was saying at that time. For  
17      example -- by the way, I have a set of those filings if the  
18      Court would like them.

19           THE COURT: No. Go ahead and tell me about them.

20           MR. HANDZO: One of the things -- let me back up. The  
21      filings arose because after Judge Romas ruled that the case  
22      would not be transferred, we of course sent a short document to  
23      the magistrate judge in D.C. with the transcript of that  
24      hearing and Google then filed a response to that and they were  
25      a couple more back and forths after that.

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1           When we were here Google argued that the New York  
2 subpoenaed parties played "staring roles" in this whole  
3 underlying manner that is playing out in Mississippi and that  
4 was part of their argument, that because of the staring role  
5 they could be transferred to Mississippi because they were so  
6 engaged with it. Well, after Judge Ramos's ruling what they  
7 wrote to the judge in D.C. was something quite different. It  
8 turns out the New York subpoenaed parties were not terribly  
9 important or involved at all. Google said, "While the movie  
10 studies in New York were involved in lobbying AG Hood, it was  
11 primarily their lobbyist of the MPAA and Jenner who directed AG  
12 Hood pursue Google." So suddenly these parties have become  
13 much less important apparently.

14           Also, one of the things that came out in those filings  
15 was one of the arguments that Google made in this case was that  
16 there is -- we should transfer both the D.C. and the New York  
17 cases to Mississippi in part to avoid inconsistent rulings  
18 between the D.C. and the New York courts. What Google said in  
19 its filing with this Court was "Google's motion to compel here  
20 is nearly identical to Google's consolidated motions already  
21 filed in the District Court for the District of Columbia  
22 against the subpoenaed parties." That is what they are arguing  
23 here. We pointed out that is not correct. There is some  
24 overlap but there are significant differences between subpoenas  
25 in New York and subpoenas in D.C.

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1           So when Google then filed its response in D.C. after  
2 Judge Ramos's ruling, it now says that the subpoenas served in  
3 New York "were considerably more limited than those at issue  
4 here," meaning in D.C. So now all of a sudden Google is  
5 agreeing to Judge Ramos that these subpoenas are not the same.  
6 They are different and they are more limited here.

7           So there are those changes. The other thing is maybe  
8 not technically a change but something I think worth bringing  
9 to the Court's attention. There are some number -- there is  
10 two, that I know of, discovery motions pending before Judge  
11 Wingate neither of them having anything to do with the issues  
12 here.

13           THE COURT: Can I interrupt for a second? Are they  
14 still on an expedited deadline down there to end on August?

15           MR. HANDZO: I believe it is August 10th, your Honor.  
16 Whether it holds is a different matter. That is the point I  
17 wanted to get to.

18           THE COURT: Okay.

19           MR. HANDZO: It is this: One of the motions filed in  
20 Mississippi was filed by Google. What happened was the  
21 Attorney General Hood produced a number of documents but then  
22 he withheld some based on privilege. Google filed a motion to  
23 compel arguing that the privilege was not valid and those  
24 documents should be produced. Back on May 21st Judge Wingate  
25 heard argument on that and asked to see the documents that were

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1 maybe 20 so he could look at them in camera. He still has not  
2 ruled on that. So it has been May 21st to today. Still no  
3 ruling on that.

4 THE COURT: How does that help you? It seems to me  
5 that to the extent he is still trying to decide on issues that  
6 impact the scope of discovery that that suggests he should be  
7 able to do that and he should be able to do it broadly.

8 MR. HANDZO: No. I think what it means, Judge, is  
9 that Google's point was, gee, we need to get it transferred  
10 because we need a quick ruling. I think the reality is a quick  
11 ruling is going to come here, not in Mississippi. Judge  
12 Wingate -- I don't know anything about Judge Wingate's docket,  
13 but I have heard it is pretty busy. We've had these fairly  
14 straightforward motions pending down there that have been  
15 pending for a long time. It is unconceivable to me that if  
16 there is a quicker ruling down there by the time we refile  
17 briefs, get a hearing date, get down there, it is going to  
18 happen much quicker here. I think the time going on since we  
19 were last here just confirms that fact. If Google is sincere  
20 in saying that they want a quick ruling, this is where it  
21 should be. It will not be in Mississippi.

22 So having said all that, your Honor, I, like  
23 Mr. Rubin, I read the Court's order and doesn't want to  
24 transgress by making all of my arguments again and I hope I  
25 made them appropriately in the transcript, but no lawyer can

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1 resist a second bite at the apple if there is even a little bit  
2 of opening. Let me repeat a couple things.

3 THE COURT: Okay.

4 MR. HANDZO: I think Google's really principal point  
5 on the motion to transfer was that there was a risk of  
6 inconsistent rulings as between Mississippi, D.C., and New  
7 York. I think I have already covered the D.C. versus New York  
8 because in fact the subpoenas are different and Google now  
9 admits --

10 THE COURT: I think you said the New York subpoena is  
11 more limited.

12 MR. HANDZO: Yes, the subpoena is more limited. There  
13 are some things that are asked for in New York that we oppose  
14 that are not in the D.C.s subpoena. For example, they have  
15 asked for all communications of all attorney generals other  
16 than Attorney General Hood. More critically I think Google has  
17 argued that any ruling here could be inconsistent with rulings  
18 that Judge Wingate may be making in Mississippi. That simply  
19 is not correct. There is nothing happening in the discovery  
20 front in Mississippi that is in any way related to what is  
21 happening here. The reason for that is, you asked Judge, what  
22 has been produced. What has been produced is all of the  
23 communications exchanged between these subpoenaed parties and  
24 Attorney General Hood. That has been given to them. Also  
25 documents showing any financial -- political contributions to

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1 Attorney General Hood or to the Democratic attorney general.  
2 What is in question are documents that Attorney General Hood  
3 never received.

4 THE COURT: I understand that. Perhaps just to make  
5 it a little more interesting for you on that particular issue  
6 knowing almost nothing about your case, it seems to me that  
7 there are all sorts of documents that Attorney General Hood  
8 never saw that are conceivably relevant. Certain kinds of  
9 e-mail communications internally of your client that might  
10 relate to the subject for example. Those could be highly  
11 relevant. Part of what I am saying sort of as a footnote is be  
12 careful what you wish for because you may find yourself in a  
13 worse position if you were before a judge who actually  
14 understood the case.

15 MR. HANDZO: I understand there is a risk in  
16 litigation no matter what position you take. Perhaps we'll  
17 have a further conversation on that point at some other time.  
18 The fundamental point to the motion to transfer is that the  
19 issues that Judge Wingate is considering relate to documents  
20 that Attorney General Hood has. The issues here relate to  
21 documents that he does not have. There is not really any  
22 overlap in that. There is just nothing that Judge Wingate has  
23 under consideration that would resolve the issues that are  
24 being raised in the motion to compel here.

25 Where I think in the end that leaves Google is there

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1       is kind of a general argument, that, well, the Court in the  
2       underlying action is going to know the relevance better than  
3       this Court perhaps or there is some judicial efficiency in  
4       transfer this all to one place. The problem for that argument  
5       is that that simply is not what the drafters of the rules said.  
6       The drafters of the rules could have gone in that direction,  
7       but they didn't. They required extraordinary circumstances  
8       which the advisory committee said is only likely to arise in  
9       rare occasions.

10           THE COURT: I will interrupt you here. I actually  
11       heard a lot of the dialogue around the passage of this rule and  
12       they were afraid that judges would reflect the case back to the  
13       original district and they didn't want that to happen.

14           If you don't mind, I am going to stop you right there  
15       unless there is any last burning point you need to make.

16           MR. HANDZO: There is not a burning point unless  
17       Mr. Wilkens tells me there is and he tells me there isn't.

18           THE COURT: I am prepared to rule then.

19           I am going to grant the motion for transfer.

20       Petitioner's Rule 45(f) motion to transfer is granted.  
21       Petitioner's motion to compel compliance with subpoenas at  
22       Docket No. 1 is hereby transferred to the Honorable Henry  
23       Wingate in the United States District Court for the Southern  
24       District of Mississippi. I will give you some explanation of  
25       my finding.

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1           As we all know Judge Ramos -- then acting as Part I  
2        Judge -- heard oral argument on this motion on July 10, 2015.  
3        He denied the motion to transfer, but he also said explicitly  
4        it was a very close call. The Order I issued on July 23, 2015,  
5        states, "a district court possesses the inherent authority to  
6        sua sponte reconsider its own interlocutory orders before they  
7        become final." *Chartis Seguros Mexico, S.A. de C.V. v. HLI*  
8        *Rail Rigging, LLC*, No. 11 Civ. 3238, 2015 WL 545565, at \*2  
9        (S.D.N.Y. Feb. 9, 2015). In other words, "application of the  
10      law of the case doctrine is discretionary and does not limit a  
11      court's power to reconsider its own decisions prior to final  
12      judgment." *Aramony v. United Way of Am.*, 254 F.3d 403, 410 (2d  
13      Cir. 2001).

14           That is all a short way of saying I have the power to  
15      essentially change the mind of the court and make a different  
16      decision from the decision that Judge Ramos made and that is  
17      what I am doing. I did want to hear the parties on what more  
18      developed and I appreciate the parties making those arguments.

19           I am well aware of what the commit notes to Rule 45(f)  
20      provide. They state, "The court may transfer in exceptional  
21      circumstances, and the proponent of transfer bears the burden  
22      of showing that such circumstances are present. The prime  
23      concern should be avoiding burdens on local nonparties subject  
24      to subpoenas, and it should not be assumed that the issuing  
25      court is in a superior position to resolve subpoena-related

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1 motions. In some circumstances, however, transfer may be  
2 warranted in order to avoid disrupting the issuing court's  
3 management of the underlying litigation, as when that court has  
4 already ruled on issues presented by the motion or the same  
5 issues are likely to arise in discovery in many districts.  
6 Transfer is appropriate only if such interests outweigh the  
7 interests of the nonparty served with the subpoena in obtaining  
8 local resolution of the motion.

9 For the sake of expediency, I will not reiterate the  
10 remainder of the factual background and applicable law that  
11 Judge Ramos thoroughly laid out at the July 10 Hearing. As  
12 Judge Ramos said, this is an "extremely close case" where  
13 "reasonable minds can disagree." Although I disagree as to the  
14 ultimate resolution of this motion, I agree with Judge Ramos'  
15 summary of the history of this case as well as his assessment  
16 of the applicable law. I will add, however, that -- since Rule  
17 45(f) became effective on December 1, 2013 -- there have been  
18 just over 40 written opinions citing Rule 45(f) to date. Of  
19 those that adjudicate Rule 45(f) motions, and not all of them  
20 do, the majority grant the motion to transfer.

21 I find that, here, exceptional circumstances --  
22 including Judge Wingate's management of the underlying  
23 litigation -- outweigh the interests of the subpoenaed parties  
24 in obtaining local resolution of the motion. It is for that  
25 reason I am granting Google's motion to transfer.

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1               First, I agree with Judge Ramos that "Google has the  
2 better of the undue burden argument." "Other courts have  
3 indicated that concerns regarding the burdens of transfer are  
4 lessened when the disputed subpoena is directed to a large  
5 corporation, rather than an individual person." I am quoting  
6 Agincourt Gaming, LLC v. Zynga, Inc., No. 14 Civ. 0708, 2014 WL  
7 4079555, at \*8 (D. Nev. Aug. 15, 2014) The fact that the  
8 subpoenaed party is "a large corporation represented by  
9 sophisticated counsel is by no means a dispositive  
10 consideration, but it is relevant as the Court evaluates any  
11 burden imposed." Id.

12               Here, the subpoenaed parties argue that they would be  
13 subject to undue burden, as they have no offices in Mississippi  
14 and would therefore be required to travel more than 1,000 miles  
15 for litigation in which they are not a party. "Almost any  
16 subpoenaed party could make the same undue burden arguments" --  
17 that litigating its discovery dispute in a foreign district  
18 would cause the party undue burden. Chem-Aqua, Inc. v. Nalco  
19 Co., No. 14 Misc. 71, 2014 WL 2645999, at \*3 (N.D. Tex. June  
20 13, 2014). Furthermore, the subpoenaed parties may be  
21 permitted to make telephonic appearances at any hearing in  
22 Mississippi. I am told by counsel for Google that in fact is  
23 the case. See id at \*3-4.; see also Judicial Watch, Inc. v.  
24 Valle Del Sol, Inc., No. 14 Misc. 0538, 2014 WL 4954368, at  
25 \*3-5 (D.D.C. Oct. 3, 2014) and Moon Mountain Farms, LLC v.

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1       Rural Cmty. Ins. Co., 301 F.R.D. 426, 430 (N.D. Cal. 2014).

2           Accordingly, I find the subpoenaed parties have failed  
3       to show they would be subject to undue burden should the  
4       subpoena-related motions be transferred to Judge Wingate.

5           Turning to exceptional circumstances, I find that  
6       Google has demonstrated circumstances that warrant transfer of  
7       the subpoena-related motions, as contemplated by Rule 45(f).

8           First -- although questions of relevance come up in  
9       any case -- the questions of relevance here implicate the scope  
10      of discovery in the underlying litigation before Judge Wingate.  
11      Citing considerations of judicial efficiency and comity, courts  
12      have granted Rule 45(f) motions where the subpoena-related  
13      motions go to the scope of discovery in the underlying  
14      litigation. In *F.D.I.C. v. Everest Reinsurance Holdings, Inc.*,  
15      for example, Judge Failla of this court transferred a motion to  
16      compel and noted that, as the judge in the underlying  
17      litigation had yet to rule on the relevance of the subpoenaed  
18      information, and I gather it is similar here. She wrote,  
19      "wishes not to hamstring his ability to control and delineate  
20      the parameters of discovery in the" underlying action. No. 13  
21      Misc. 381, 2014 WL 260589, at \*2 (S.D.N.Y. Jan. 23, 2014).

22      Likewise, in *Wultz v. Bank of China, Ltd.*, the court granted a  
23      Rule 45(f) motion to transfer to Judge Scheindlin of this court  
24      who was presiding over the underlying litigation -- "due to her  
25      familiarity with the full scope of issues involved as well as

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1 any implications the resolution of the motion will have on the  
2 underlying litigation." 304 F.R.D. 38, 47 (D.D.C. 2014).  
3 Courts have likewise rejected arguments by subpoenaed parties  
4 that the subpoenas at issue are irrelevant to the underlying  
5 dispute and held instead that such relevance arguments  
6 "emphasize the need for the court where the underlying matter  
7 lies to decide" the subpoena-related motions. See XY, LLC v.  
8 Trans Ova Genetics, L.C., No. 14 Misc. 00778, 2014 WL 4437728,  
9 at \*2 (D.D.C. Sept. 10, 2014). In Federal Home Loan Mortgage  
10 Corp. v. Deloitte & Touche LLP, the court rejected the very  
11 argument that respondents present here -- "that nearly all  
12 motions to compel would be subject to transfer if the rule were  
13 so broad as to encompass any motion where another court has to  
14 make a relevancy determination." 15 Misc. 568, 2015 WL  
15 3413540, at \*2 (D.D.C. May 2015). There, the court held that  
16 "resolution of the motion to compel requires delving into  
17 substantive issues in the highly complex underlying action" --  
18 which I find to be the case here as well. I likewise reject  
19 the subpoenaed parties' argument that these subpoenas present  
20 only a "run-of-the-mill relevance dispute" -- the questions of  
21 relevance here run much deeper than garden-variety relevance  
22 objections.

23 Second, the main Mississippi litigation in the present  
24 case is subject to an expedited discovery schedule, currently  
25 set to conclude on August 10. The parties expected to move

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1 rapidly into summary judgment after the close of discovery.  
2 Courts have considered unusual discovery timetables in granting  
3 Rule 45(f) motions. See, e.g., Federal Home Loan Mortgage  
4 Corporation, 2015 WL 3413540, at \*3 and In re Subpoena to Kia  
5 Motos America, Inc., No. 14 Civ. 315, 2014 WL 2118897 at \*1  
6 (C.D. Cal. Mar. 6, 2014). Courts have also considered the  
7 history of discovery in the underlying litigation,  
8 particularly, how contentious discovery has been to date.  
9 Seems to be the case here. See Elliot v. Mission Trust Servs.,  
10 LLC, No. 14 Civ. 972, 2014 WL 7157156, at \*3 (W.D. Tex. Dec.  
11 12, 2014). Accordingly, I find that the transfer may help  
12 avoid unnecessary disruption with Judge Wingate's management of  
13 his case particularly in light of the looming discovery cutoff  
14 date.

15 Third, I note separately that the allegations that  
16 Google presents here resemble those in the underlying  
17 litigation addressed in Valle Del Sol, Inc. v. Kobach, No. 14  
18 Misc. 219, 2014 WL 3818490 (D. Kan. Aug. 4, 2014), and Judicial  
19 Watch, Inc., v. Valle Del Sol, Inc., No. 14 Misc. 0538, 2014 WL  
20 4954368 (D.D.C. Oct. 3, 2014). The underlying litigation in  
21 those cases involved allegations that state officials in  
22 Arizona worked in concert with private organizations to commit  
23 constitutional violations. In both cases, the courts agreed to  
24 transfer the subpoena-related motions to the District of  
25 Arizona.

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1 By contrast, I am not persuaded by any of the  
2 subpoenaed parties' remaining arguments in opposition. First,  
3 as they admit in their opposition, "the subpoenaed parties  
4 declined to search for, review or produce documents that AG  
5 Hood never saw, including internal communications about  
6 contributions to AG Hood." They contend that "such documents  
7 are completely irrelevant to the underlying litigation." As I  
8 mentioned I am not persuaded at this juncture that this is  
9 necessarily true, and Judge Wingate is best positioned to  
10 evaluate the merits of the subpoenaed parties' arguments.  
11 Second, the subpoenaed parties contend that Google's need to  
12 issue multiple subpoenas in multiple jurisdictions was  
13 "dubious" and that Google's subpoenas were simply a "tactical  
14 ploy to create arguments for transfer, rather than any real  
15 need for discovery." At this stage I am hesitant to conclude  
16 this is the case particularly when Google has subpoenaed third  
17 parties necessary where third parties are located.

18 So in closing I find that the exceptional  
19 circumstances here outweigh any interest that the subpoenaed  
20 parties have in obtaining local resolution of the motions.  
21 Google's Rule 45(f) motion to transfer is therefore granted. I  
22 will issue a short written order to that effect later today.

23 Thank you.

24 ○○○

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